IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11967 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRUPESH CHANDULAL ABHANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11967 of 2004

MR NV ANJARIA for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/01/2005

ORAL JUDGEMENT

Rule. Mr.S.P.Hasurkar, learned AGP waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing

for the parties, the matter is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 1.9.04 passed by the Secretary, Social Justice and Empowerment Department, Gandhinagar. By the impugned decision, the caste certificate issued in favour of the petitioner to the effect that he belongs to the Scheduled Caste is ordered to be cancelled. It is also noted that the petitioner has entered the service of the Government on the basis that he belongs to the Scheduled Caste category.

3. Contending that he belongs to "Turi Barot" community, the petitioner had applied for and was given a caste certificate by the competent authority of the State Government. The petitioner entered the Government service on the basis of his reserved category status. Later on, however, the Government had some doubt about the genuineness of the claim of the petitioner. After hearing the petitioner, therefore, his caste certificate was ordered to be cancelled by the impugned order dated 1.9.04. In the impugned order, it is noted that in support of his claim that he belongs to "Turi Barot" community, the petitioner produced the caste certificate and his school leaving certificate and other than these two documents, he was unable to produce any additional material in support of his claim. The Authority, therefore, found that the claim of the petitioner that he belongs to Turi Barot community cannot be accepted. It was found that the petitioner belongs to Barot community which is not a Scheduled Caste as per the various notifications and that, therefore, his caste certificate was ordered to be cancelled.

4. Appearing for the petitioner, learned advocate Shri Anjaria points out that the father of the petitioner also possessed the certificate that he belongs to "Turi Barot" community, that he had worked in clerical capacity and retired as Deputy Executive Engineer in the Government service. He submits that the caste certificate of the father of the petitioner was never questioned. It is his contention that one of the accepted grounds for issuing a caste certificate is the certificate of the father of the applicant. Additionally, the petitioner had also produced certificates issued by the M.L.A. of the area in which the petitioner resides as also from one leading member of the Turi Barot community. It is contended that these documents have been ignored by the competent authority and adverse decision is arrived at.

5. I find that before passing the impugned order, three important aspects have not been taken into full consideration. Firstly, the issue with respect to the status of the father of the petitioner has not been accounted for. The certificates issued by the MLA of the local area as well as a leading member of the community have also not been taken into account. In the facts of the case, therefore, I find it necessary that the issue be reexamined and fresh decision be arrived at bearing in mind the material produced by the petitioner. It will be open for the petitioner to produce additional material if available. The authority shall pass appropriate order after permitting reasonable time to the petitioner to produce additional material if he so desires. To enable the authority to take a fresh decision, the impugned order dated 1.9.04 is set aside. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)